

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 193 OF 2006

Mr. B.K. Shrivastava ... Petitioner

V/s

1. Mrs. Kanta Arjandas Chandwani

2. M/s. Anand Raj Estates P. Ltd. ... Respondents

Mr. K.P. Pandey for the petitioner.

Mr. Nihar A. Ghag with Ashish S. Naik for the respondent No.1.

CORAM: P.V. KAKADE, J.

DATED: 14TH FEBRUARY, 2006

P.C.:

1. The petitioner has moved this petition against the order dated 12.12.005 passed by the Addl.Commissioner, Konkan Division, Mumbai in Appeal No. 415 of 2005 whereby revision application preferred by the present petition against the order passed by the competent authority Konkan Division, Mumbai, dated 11.10.2005 came to be dismissed.

2. I have heard the learned counsel for both parties. Perused the record.

3. The respondent No.1 in this petition had preferred application under Sec. 24 of the Maharashtra Rent Control Act, 1999 against the respondents for eviction from the suit premises which is Flat No. 9, First floor, Krishna (Khar) Co-op. Housing Society at 15th Road, Khar (West), Mumbai - 400 052 on account of expiry of licence period under the agreement.

After hearing both parties, the competent authority came to the conclusion that the application under Sec. 24 deserves to be allowed and the respondents were directed to hand over the vacant and peaceful possession of the suit premises to the applicant/present respondent No.1. The petitioner and respondent No.2 were also directed to pay the amount of Rs.1,36,000/- to the present respondent No.1 towards arrears of compensation and were further directed to pay damages at the rate of Rs.16,000/- p.m. from 11.3.2005 till the actual possession was handed over.

4. Being aggrieved by the said order, the petitioner preferred revision before the Addl. Commissioner of Konkan Division, Mumbai, against the said order.

After hearing both parties, the Tribunal came to the conclusion that the order passed by the competent authority was just, legal and proper and accordingly revision application was disposed of in limine.

4. At the outset, it may be noted that leave and licence agreement dated 6.6.2002 between respondent Nos. 1 and 2 was duly registered and, therefore, became conclusive evidence under the provisions of M.R.C. Act, 1999. It was submitted on behalf of the petitioner that he was not aware of the terms and conditions of the agreement between the respondents, however, the document of agreement itself shows that the present petitioner was party to the said agreement in his capacity as a witness thereto and, therefore, it cannot lie in the mouth of the petitioner that he was unaware of the terms and conditions of the said agreement which mentions in very clear terms that the premises are being taken on leave and licence basis for a temporary period of 33 months which fact makes it clear that the present petitioner was well aware of the agreement and its expiry. On the other hand, the plea which was sought to be taken by him to the effect that he was tenant in the suit premises, was not at all supported by any iota of evidence either before the competent authority or before

the revisional authority and, therefore, such plea cannot be taken into account which is said to be canvassed even during the course of the arguments in this petition.

5. Under the circumstances, I am satisfied that both authorities below have correctly appreciated the factual as well as legal aspects involved in the dispute and have come to the right conclusion that the petitioner is liable to be evicted from the suit premises as directed by the competent authority under Sec. 24 of the Maharashtra Rent Control Act, 1999. In other words, there is absolutely no case made out to interfere in the said order and hence the petition deserves to be dismissed and stands dismissed with no order as to costs.

6. At this stage, the learned counsel for the petitioner submitted that he should be given one month's time to vacate the premises. In view of the facts and circumstances, four weeks' time is granted to vacate the premises on the following conditions:-

(i) That, the petitioner shall furnish undertaking to this Court in respect of vacating the premises and all

the adult members of the family of the petitioner shall be party to the said undertaking which is to be furnished within two weeks from the date of this order.

(ii) The petitioner shall not create any third party interest during the abovesaid period of four weeks.

(iii) No further time shall be sought for vacating the said premises by the petitioner after completion of four weeks' period.

(iv) The amount of Rs.1,28,000/- which is due and payable from the petitioner to the respondent No.1 shall be deposited in the Court within two weeks from today failing which the concession granted to the petitioner to vacate the premises within four weeks shall stand automatically cancelled.

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